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Hearing Date and Time: January 28 at 10:00 a.m. (EST)
Objection Date and Time: January 23 at 4:00 p.m. (EST)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
LEHMAN BROTHERS)	Case No. 08-13555 (JMP)
HOLDINGS INC., et al.,)	
)	Jointly Administered
Debtors.)	
)	

**RESPONSE OF THE PENSION BENEFIT GUARANTY
CORPORATION TO DEBTOR'S AMENDED MOTION PURSUANT TO
SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE, FEDERAL
RULES OF BANKRUPTCY PROCEDURE 2002, 6004 AND 9014, AND
RULES 6004-1, 9006-1 AND 9014-1 OF THE LOCAL BANKRUPTCY RULES
FOR APPROVAL OF THE SALE OF DEBTOR'S INTEREST IN A LOAN SECURED
BY PROPERTY LOCATED AT 816 CONGRESS AVENUE IN AUSTIN, TEXAS**

TO THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE:

Pension Benefit Guaranty Corporation (“PBGC”), a United States government agency, responds to Debtor’s January 6, 2009 Amended Motion Pursuant to Sections 105 and 363 of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 2002, 6004 and 9014, and Rules

6004-1, 9006-1 and 9014-1 of the Local Bankruptcy Rules For Approval of the Sale of Debtor's Interest in a Loan Secured By Property Located at 816 Congress Avenue in Austin, Texas ("Debtor's Motion").

Lehman Brothers Holdings Inc. ("LBHI") and its affiliated debtors (collectively "Debtors") request authorization to enter a sales agreement ("Agreement") to sell their interest in a mezzanine loan ("Loan") secured by real property located at 816 Congress Avenue in Austin, Texas. The Agreement also includes the sale by LBHI's non-debtor subsidiary, LB 816 Congress Holdings LLC, of its equity interest in another non-debtor subsidiary, 816 Congress Holdings LLC ("816 Congress").¹

LBHI sponsors the Lehman Brothers Holdings Inc. Retirement Plan ("Pension Plan"), a defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), *as amended*, 29 U.S.C. §§ 1301-1461. 816 Congress, and its wholly owned subsidiaries, are members of LBHI's controlled group in accordance with ERISA.² Pursuant to ERISA, if the Pension Plan terminates, LBHI and all members of its controlled group as of the termination date are jointly and severally liable for any underfunding arising upon the date of the Pension Plan's termination.³ LBHI and each member of its controlled group will also be jointly and severally liable for any contributions owed to the Pension Plan, and premiums

¹ 816 Congress owns 100% of the equity of 816 Congress Mezzanine LLC, which in turn, owns 100% of the equity in 816 Congress Owner LLC. Debtor's Motion ¶ 6 n.1.

² See 29 U.S.C. § 1301(a)(14). "LBHI is the indirect parent of LB 816 Congress LLC, which in turn holds a 90% joint venture interest in 816 Congress Holdings LLC." Debtor's Motion ¶ 6 n.1.

³ 29 U.S.C. §§ 1301(a)(18), 1362(b).

owed to PBGC.⁴

On December 10, 2008, PBGC issued a Notice of Determination that the Pension Plan should be terminated. On December 12, 2008, PBGC filed a complaint in the United States District Court for the Southern District of New York seeking termination of the Pension Plan with a termination date of December 12, 2008.

PBGC estimates that, as of December 11, 2008, the Pension Plan's unfunded benefit liabilities are \$42,600,000. PBGC also estimates that, upon termination of the Pension Plan, LBHI and each member of its controlled group will be jointly and severally liable for a termination premium of \$72,367,500.

The Debtor's Motion and Proposed Order do not seek approval to sell LBHI's non-debtor subsidiary's equity interests in 816 Congress free and clear of any interests.⁵ PBGC reserves its rights to the extent that the Debtors later seek authority to transfer 816 Congress free and clear of any interests.

⁴ See 26 U.S.C. § 412(c)(11); 29 U.S.C. §§ 1082(c)(11); 1307. For pension plan years beginning after December 31, 2007, see 26 U.S.C. § 412(b)(1) & (2); 29 U.S.C. § 1082(b)(1) & (2).

⁵ The Court has previously confirmed that it lacks authority over the assets of non-debtor subsidiaries. See Transcript of Omnibus Hearing, dated December 22, 2008, at 102. Attached as Exhibit 1.

Dated: Washington, D.C.
January 23, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response of the Pension Benefit Guaranty Corporation to Debtors' Amended Motion Pursuant to Sections 105 and 363 of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 2002, 6004 and 9014, and Rules 6004-1, 9006-1 and 9014-1 of the Local Bankruptcy Rules For Approval of the Sale of Debtor's Interest in a Loan Secured By Property Located at 816 Congress Avenue in Austin, Texas, was served electronically and/or by first class mail, unless otherwise indicated, this 23rd day of January, 2009, on the following:

The Honorable James M. Peck
United States Bankruptcy Court
for the Southern District of New York
One Bowling Green
New York, N.Y. 10004
Courtroom 601
(by overnight mail)

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